

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRAIG ALAN QUEEN,

Defendant-Appellant.

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UNPUBLISHED

February 8, 2005

No. 250590

Oakland Circuit Court

LC No. 2002-186208-FH

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

MEMORANDUM.

Defendant was convicted by a jury of assault with intent to do great bodily harm, MCL 750.84, and was sentenced to a prison term of fourteen months to ten years. He appeals as of right. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that his conviction should be reversed because of several improper remarks by the prosecutor during closing and rebuttal argument. Because defendant did not object to the remarks below, our review is limited to whether there was plain error that affected his substantial rights. *People v Abraham*, 256 Mich App 265, 274; 662 NW2d 836 (2003). Defendant has the burden of persuasion with regard to showing prejudice based on this unpreserved issue. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Although the complained of remarks were improper, given the strong evidence of defendant's guilt, including that his wife was asleep on the couch when defendant began striking her on the back of the head with a baseball bat causing significant bleeding and staining on the couch, and the implausible nature of his account of the incident, i.e., that he was defending himself, we conclude that he has not established prejudice rising to the level of plain error affecting his substantial rights. It is overwhelmingly unlikely that the jury would have acquitted defendant even if none of the challenged prosecutorial remarks had been made. Accordingly, any error with regard to those remarks did not affect defendant's substantial rights and, thus, does not warrant relief for this unpreserved issue.

Also, while the prosecutor's remark during rebuttal argument understated the prosecution's burden of proving guilt beyond a reasonable doubt, the trial court instructed the jury on reasonable doubt, defining it as "a fair, honest doubt, growing out of the evidence or lack of evidence." That instruction should have made it clear that a mere belief that defendant was probably guilty was not enough to convict him. Juries are generally presumed to follow their

instructions. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997). Accordingly, the jury presumably followed the trial court's instruction on reasonable doubt rather than any inconsistency presented by the prosecutor's brief remark so that defendant has not shown error affecting his substantial rights based on that remark.

Defendant also argues that his trial counsel provided ineffective assistance by failing to object to the prosecutorial arguments in question. To establish a claim of ineffective assistance of counsel, a defendant must show (1) deficient performance by counsel and (2) a reasonable probability that the result of the proceeding would have been different absent counsel's error. *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). Again, given the strong evidence of defendant's guilt and the implausibility of his account of the incident, we conclude that there is no reasonable probability that an objection by trial counsel to any or all of the prosecutorial arguments would have changed the result of the trial. Thus, defendant is not entitled to relief based on his claim of ineffective assistance of counsel.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Mark J. Cavanagh  
/s/ Stephen L. Borrello